

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DENNIS CAPPS,

Petitioner,

v.

CIOLLI,

Respondent.

Case No. 1:20-cv-00766-AWI-SAB-HC

ORDER VACATING APRIL 12, 2021
FINDINGS AND RECOMMENDATION
(ECF No. 11)

ORDER DIRECTING RESPONDENT TO
FILE REPLY TO PETITIONER'S
OPPOSITION TO MOTION TO DISMISS

Petitioner is a federal prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

On October 13, 2020, Respondent filed a motion to dismiss the petition. (ECF No. 10). On March 25, 2021, the undersigned issued findings and recommendation recommending the motion to dismiss be granted. (ECF No. 11). On April 12, 2021, the Court received Petitioner's objections, in which Petitioner stated that he never received Respondent's motion to dismiss. (ECF No. 12 at 2).¹

On May 7, 2021, the Court ordered that a copy of the motion to dismiss to be sent to Petitioner and granted Petitioner twenty-one days to file an opposition or statement that he relies on the arguments set forth in his objections as an opposition. (ECF No. 13). On May 28, 2021, Petitioner filed an opposition to the motion to dismiss. (ECF No. 14). To date, Respondent has not filed a reply to the opposition.

¹ Page numbers refer to the ECF page numbers stamped at the top of the page.

1 In light of Petitioner's arguments set forth in his objections and opposition, the Court
2 finds that a reply from Respondent would assist the Court in this matter. The Court would like
3 Respondent to address Petitioner's argument that he did not have an unobstructed procedural
4 shot to assert his actual innocence claim because any attempt to amend his first § 2255 motion to
5 incorporate a Descamps/Mathis claim would have been futile under Rule 15 and due to the
6 statute of limitations in addition to any other issue Respondent believes is necessary for the
7 resolution of the motion to dismiss.

8 Accordingly, the Court HEREBY ORDERS that:

- 9 1. The findings and recommendation issued on April 12, 2021 (ECF No. 11) is VACATED;
10 and
11 2. Within thirty (30) days of the date of service of this order, Respondent shall file a reply to
12 Petitioner's opposition to the motion to dismiss (ECF No. 14).

13 IT IS SO ORDERED.
14

15 Dated: June 16, 2021


UNITED STATES MAGISTRATE JUDGE